

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO TUMALAD, ACCUSED-APPELLANT.

G.R. No. 84835. July 31, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

The accused-appellant Francisco Tumalad was charged with the crime of rape in an Information filed on 30 January 1981 by complainant Milagros Dioneda before the then Court of First Instance of Sorsogon. The complaint read as follows:

"That on or about the 2nd day of September, 1980, in the Municipality of Bacon, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, by means of force, violence, threats and intimidation, did then and there wilfully, unlawfully and feloniously succeeded to have carnal knowledge of one MILAGROS DIONEDA, a minor, 15 years old against her will and consent, to the damage and prejudice of Milagros Dioneda.

CONTRARY TO LAW."^[1]

After trial, the trial court, in a decision^[2] dated 31 August 1987 found the accused guilty of the crime charged. The dispositive portion of the decision reads:

"ACCORDINGLY, the accused FRANCISCO A. TUMALAD, is convicted of Rape defined and penalized under par. 1, Art. 335 as amended by Rep. Act No. 4111 and sentences him to Reclusion Perpetua and to indemnify the complainant the amount of P12,000.00 for moral damages, and costs of the suit.

SO ORDERED."

The facts of the case were summarized by the trial court in the following manner:

"The prosecution's evidence was supplied by Dr. Jaime Co, Florentino Dioneda and the private offended party, Milagros Dioneda. The evidence shows that Milagros is 15 years old, virgin, born on July 4, 1965. x x x Milagros was taken as a ward and household help by her aunt, Hilda Dioneda, sister of her father, who was to finance her high school studies. For almost three years, Milagros was living with Hilda in Hilda's house in Burabod, Bacon, Sorsogon. The accused, Francisco Tumalad, was the common-law husband of Hilda, also living with his common-law wife almost ten (10) months before the incident. On the fateful day of September 2, 1980, Milagros arrived home from school for lunch. Her aunt Hilda was at her place of work in Botica Ocampo, Sorsogon, Sorsogon, next town from Bacon, Sorsogon. Hilda's routine was to leave for work in the morning and return home in the evening. The accused who was recently jobless remained in the house tending their small store. Around 12:00 noon, a very rainy day, Milagros and the accused took lunch together. They were the only two persons in the house. After lunch and (when Milagros was) about to wash the dishes, the accused who was now inside the bedroom called for Milagros, 'Milagros, come here'. The time was around 1:30 p.m. and raining heavily. Sensing no evil motive for the call, Milagros entered the bedroom and asked, 'What is it, Tio?'. The accused grabbed Milagros's hands. She struggled, got free and moved towards the door but the accused caught her hand again, pulled her inside and pushed her to the bed. She hit her knee on the bed,

fell flat on the bed faced down. The accused locked the door and approached Milagros who was lying on the bed. The accused started embracing and kissing Milagros and telling the latter not to make any noise, 'if you still want to live'. The accused was in shorts and shirtless. At this point Milagros was now flat on the bed, face up and the accused lying on top, holding Milagros on both hands with his left hand. The knee of the accused was placed between the thighs of the girl with his free right hand, unzipped his pants releasing his penis. When the accused pulled down Milagros' panty the latter shouted 'Tia Mameng', another aunt, Carmen, who lives across the street. To stop the cry the accused covered the mouth of Milagros with his hand. Milagros was biting the rapist but the latter pulled her hair tilting her head. Milagros kept on struggling and moving her body to prevent being raped. All her efforts were of no avail as accused's penis penetrated her vagina. Milagros felt pain upon penetration. There was blood in the vagina. When the accused stood up, Milagros noticed a whitish fluid on her vagina. Then someone appeared at the store to buy. Milagros got her panty, walked towards the store which was inside the house and proceeded out the house to the house of her Tia Mameng across the street. From the house of her Tia Mameng, Milagros proceeded one kilometer to her father's house and reported to her father her harrowing experience of being raped. Her aunt, Tia Mameng, followed her. Receiving his daughter's news, the father went to the house of the accused. Milagros, with her Aunt Carmen, proceeded to the house of her grandfather and again reported her harrowing experience to her grandfather.

Testifying, Florentino Dioneda, the father of the victim declared, that he signed the original complaint for rape for his minor daughter (Exh. 'B'). Around 1:30 p.m. on September 2, 1980, his daughter reported to him in his house that the accused raped her. Losing no time he went to the house of the accused. Confronting the accused about his daughter's report, the accused pushed him out of the house. He left accused's house and proceeded to the police station and reported the rape incident. From the police station, he brought his daughter to the Provincial Hospital in Sorsogon, Sorsogon for medical examination. The following day he filed a criminal complaint against the accused."^[3]

In the instant appeal, the accused raises the following assignment of errors:^[4]

"I

The lower court erred in placing absolute, uncritical reliance on the evidence of the prosecution, without considering even half as much the evidence of the defense.

II

The lower court erred in its unsupported finding that accused-appellant had a strong moral and financial influence over the offended party.

III

The lower court erred in its finding that the offended party was without any motive weighty enough to make her trump up charges against accused-appellant.

IV

The lower court erred in not acquitting accused-appellant on the ground of reasonable doubt."

The errors assigned all come down to the argument that the prosecution had failed to prove the guilt of the accused beyond reasonable doubt. Accordingly, the assigned errors will be discussed together in the paragraphs which follow.

The principal defense presented by the accused was basically that he did not rape the complainant Milagros Dioneda, because he had no need to rape her, that indeed complainant had led the accused into sexual play and

onanism but not intercourse. The accused, more specifically, first pointed to the circumstance that no signs of physical injury were found on her body upon physical examination of Milagros Dioneda. Milagros was examined by Dr. Jaime Co on the afternoon of the very day that the rape occurred. His findings were summarized by the trial court as follows:

"According to Dr. Jaime Co, on September 2, 1980 around 3:25 p.m., he examined Milagros Dioneda. His external findings: No external sign of physical injury; very scanty pubic hair. Internal findings: Vagina admits one (1) finger with slight difficulty; hymen with fresh laceration at 6:00 o'clock; smear for spermatozoa - positive. He issued a medical certificate of his findings (Exh. 'A'). In his opinion there was penetration of the penis into the vagina because of presence of sperm cells, deep inside the vaginal canal." [5]

The circumstance that, despite her testimony that she had fought and resisted vigorously the sexual assault upon her by the accused, there were no signs of physical injury on her body, does not negate the commission of rape. [6] Force, as an element of the crime of rape, need not be irresistible force; all that is required is that force was successfully used. In *People v. Sarile*, [7] the Court explained:

"Nor is the credibility that attaches to complainant's narration weakened by the assertion of the inadequacy of the force exerted on her. In another early decision, *United States v. Villarosa* (4 Phil. 434), promulgated in 1905, this Court, through Justice Torres, held: 'It is a doctrine well established by the courts that in order to consider the existence of the crime of rape it is not necessary that the force employed in accomplishing it be so great or of such character as could not be resisted; it is only necessary that the force used by the guilty party be sufficient to consummate the purpose which he had in view. (Judgment May 4, 1878, Supreme Court of Spain.)'. There is this similar ruling in *People v. Momo* (56 Phil. 86 [1931]): 'It need not be irresistible; 'it need but be present, and so long as it brings about the desired result, all consideration of whether it was more or less irresistible is beside the point.' x x x" (Underscoring supplied)

The defense then presented a long story the point of which was that Milagros, far from having been raped by the accused, had been in love with him and had seduced him on that noon of 2 September 1980 and had left the house crying because the accused had advised her to leave the house. This involved story was summed up in the trial court's decision in these terms:

"On the side of the defense Julio Dioneda, Hilda Dioneda, Milagros Dioquino Morato and the accused Francisco Tumalad, testified. The evidence shows that x x x several months before the alleged incident the accused had observed that the offended party was falling in love with him. In spite of her classes in school the offended party comes home any time in the morning and afternoon. When the offended party arrives home, she sits beside him and embraces him. Sometimes she takes a bath and wears seductive dress. The accused had to remind the offended party to refrain from these acts as she was already grown up. Accused informed his common-law wife about the behavior of her ward. At first Hilda refused to believe his story so the accused instructed Hilda not to go to work and observe her ward's behavior. Around 9:00 o'clock in the morning, while Hilda was bathing, they observed Milagros approaching their house but sensing that Hilda was in the house, refrained from entering and went back to school. Convinced that Milagros was infatuated with the accused, Hilda told her father, Julio Dioneda, to take Milagros as boarder or allow her to eat lunch with him to avoid any compromising situation with the accused. Milagros, as instructed, stayed with her grand-father for a week, thereafter, returned to the house of the accused. Upon Milagros' return Hilda told Milagros that she (Hilda) will stop spending for her (Milagros) schooling. On September 2, 1980 around 2:00 p.m., while the accused was resting in bed Milagros entered the bedroom, sat on the bed and told the accused of her problem, that her aunt would stop supporting her studies. The accused answered that he was in no position to help her as he was jobless. Hearing the answer Milagros cried and moved closer towards the accused until her breast was touching his body. Reacting, he embraced Milagros. They found themselves lying together, embracing, kissing and romancing each other. The accused raised her skirt and pulled down her panty. He was fingering the girl's organ while the offended party was also holding his organ. Still lying side by side, and fingering the girl's

organ, the accused masturbated. In masturbating the turgid male organ was touching the vagina until the moment of ejaculation. At the involuntary moment of ejaculation the penis was touching the lips of the vagina and the sperm covered the vagina and the girl's abdomen. However, the accused categorical-ly denied that his penis penetrated the vagina. After the torrid romance the accused said, 'You see what happened to us'. He told her that she better leave the house because what happened will always happen. Rebuked Milagros cried. Then someone appeared at the store. The accused stood up and attended to the customer. He saw Milagros crying and walking out of the house. Later the father of Milagros arrived and confronted the accused what he did to his daughter. When the accused denied doing wrong, the father left their house. The grandfather, the common-law wife of the accused, the aunt and the schoolteacher of the victim corroborated the defense version of the incident.

x x x x x x x x"[8]

The story woven by the accused with all the artfulness and imagination of a cheap paperback did not persuade the trial court. Upon the one hand, Francisco's story appeared contrived and implausible to the trial court. Upon the other hand, the trial court found the testimony of complainant Milagros Dioneda to be straightforward, "firm and categorical" and obviously worthy of credence:

"In rape cases, the offended party's testimony must be subject to a thorough scrutiny. The reason is that crimes against chastity by their very nature usually involve only two persons, the complainant and the accused. The Court examined with greatest care the complainant's story and subjected it to a thorough scrutiny to determine its veracity in the light of human nature and experience. The Court does not find any flaw in the testimony of the complainant. The testimony, so firm and categorical, does not give rise to any doubt. She narrated clearly and concisely the harrowing events that befall her in the afternoon of September 2, 1980 in the bedroom of their dwelling house. She did not lose time in reporting the untoward incident to her father and seeking justice and retribution."[9]

Milagros Dioneda expressly and repeatedly denied the tale told by the accused and stood firm under cross?examination. She testified thus --

Q: Milagros, Francisco Tumulad here testified that before the incident took place in unexpected hour 9:00 o'clock in the morning while he was seated in the sofa, you would sit by his side, what have you to say about that?

A: Well, that is not true, sir, that is only a concoction because he wanted to cover up his bestial act.

Q: Also the accused testified that whenever you take a bath you always wear sheer dresses and then you would come with him and embrace him, what have you to say about that?

A: How could I do that because whenever I took a bath, after I took a bath it was already time to go to School, how could I do that when there is no more time for me to go near him because it is already time for me to go to school.

Q: Okay, also the accused testified to the effect that you were asked to leave his house and you were told to transfer to the house of your grandfather because according to him he want to avoid your advances, what have you to say about this?

ATTY. LABITAG:

Objection on the ground that it was already an evidence during the direct and cross of this particular witness.

ATTY. RUBIO:

With that manifestation I would withdraw my question, it would be redundant, of course, we are ready on the

basis of the manifestation. I will propound another question.

Q: In connection with the rape case, the accused testified that while he was in bed you entered the room and that you took a seat beside him on the bed, what have you to say about that?

A: Well, that is not true sir, that is only concoction in order to hide his bestial actuation or acts.

Q: Also he testified that in that situation you embraced him and cried because you have a problem and place your breast on him over his body?

A: That is not true, that is only his concoction in order to hide his bestial act.

Q: The accused here testified that his penis was not able to penetrate your sexual organ and that his organ ejaculated just outside the lips of your vagina, what do you have to say about that?

A: Well, the truth and in fact really his penis penetrated and entered my vagina and as a matter of fact there is a medical certificate to support it.

ATTY. RUBIO:

For the record I would request to place on record the fact that the witness cried on the stand.

INTERPRETER:

The witness when answering the question she is crying.

ATTY. RUBIO:

That would be all no further question.

CROSS-EXAMINATION

BY ATTY. LABITAG:

Q: Miss Witness you testified that you could not have possibly sat on some occasion prior to the incident beside this accused because you usually go to class after taking a bath, did I get you right?

A: Yes, sir.

Q: How about on Saturdays and Sundays as well as in public holidays, do you usually go to classes?

A: No, sir."[10]

In the effort to strengthen the story of the accused, the defense presented Hilda Dioneda, the common-law wife of the accused Francisco Tumalad and aunt of the complainant Milagros Dioneda. Hilda testified that the accused had told her that Milagros was infatuated with him, that Milagros would sometimes come home unexpectedly, complaining of a headache; that according to Francisco, when Milagros would come home during school hours, she would "cream up", take a bath and "spray perfume" and put on "sheer dresses". The testimony of Hilda Dioneda cannot, however, be given substantial weight. In the first place, that testimony was basically hearsay in character, expressly based upon what the accused Francisco Tumalad had conveyed to Hilda. In the second place, Hilda had expressly admitted that Francisco was her common-law companion and that she had hated her niece Milagros. She thus had a powerful motive to try and exculpate Francisco at the expense of her 15-year old niece.

The defense also presented Julio Dioneda, grandfather of Milagros and father of Hilda Dioneda. He testified in this manner:

Q: Now, sometime in the first week of August, 1980, do you remember whether you have an occasion when

you talk with your daughter, Hilda.

A: Yes, sir, we had a talk.

Q: Where?

A: At my house.

Q: Do you know the reason why she went to your house at the first week of August, 1980?

A: Yes, sir.

Q: What was the reason?

A: According to Hilda, "Father, you include Milagros in the preparation of the food for lunch because I told her that she should take her lunch here at your house."

Q: Did she tell you the reason why she wanted Milagros to take her lunch with you?

A: Because Francisco is alone at home and Milagros is also alone with Francisco.

Q: And what did you do because of that request of your daughter Hilda?

A: I accept it.

Q: And so, did you prepare lunch that day for Milagros?

A: Yes, sir, I prepared.

Q: Did she take her lunch with you?

A: She did not go to my house.

Q: And did you have occasion to see Milagros the following day?

A: Yes, sir, I saw her because Milagros got flowers.

Q: Where did she get flowers?

A: At my house.

Q: And what did you tell her regarding the request of Hilda that she should take her lunch at your house?

A: I accepted but Milagros told me not to worry about her because she is already grown-up.

Q: And after that day or rather the subsequent days, did she take her lunch at your house?

A: No, sir.

Q: Do you know where she was taking her lunch everyday thereafter?

A: She was taking her lunch at the house of Hilda."^[11] (Underscoring supplied)

We note that Julio Dioneda's testimony does not in any way corroborate the story of Francisco Tumulad that Milagros was in love with him. Indeed, the testimony of Julio could very well be understood as meaning simply that Francisco should not be given an opportunity to take advantage of the 15-year old Milagros, and that, according to Milagros, she was a grown-up and hence not afraid of Francisco.

The accused's complex story included the contention that there had been no sexual intercourse at all between him and Milagros that early afternoon of 2 September 1980. In his Brief, the accused argued that if he, Francisco, had

indeed forced himself upon Milagros, the latter would have suffered multiple lacerations in her genitalia.[12] The accused's boasting is at once perplexing and thoroughly unpersuasive here. The medical examination of Milagros had shown the presence of a fresh laceration in her hymen. That was certainly more than sufficient to show that penetration of the vagina had occurred, and that the crime of rape was consummated. Jurisprudence tells us in fact that laceration of the hymen is not necessary to prove the consummation of the crime of rape;[13] that an accused may be held guilty of rape regardless of whether there was any laceration of the hymen or not. It is also settled doctrine that full penetration of the vagina is not constitutive of rape, and that the slightest penetration -- without the hymen being reached and lacerated at all -- is sufficient to consummate the crime.[14]

The appellant sought to make much of supposed inconsistencies in the testimony of Milagros, i.e., whether the accused had kissed and fondled her before or after the sexual intercourse; whether the accused had pulled down her undergarment with his left or with his right hand; and when precisely did she discover that she was bleeding. The Court considers that such inconsistencies -- if inconsistencies they were -- are too insubstantial and trivial to adversely affect the credibility of Milagros' testimony.[15]

The accused challenged as crude and unreliable the procedure used by Dr. Jaime Co in conducting the medical examination of Milagros. This challenge has no merit. We agree with the Solicitor General's response to it:

"Appellant is not a medical expert, as to validly question the medical procedure applied by Dr. Co in conducting the medical examination of private complainant.

If indeed he was doubtful of the reliability and veracity of Dr. Co's adopted procedure and finding, appellant should have presented another medical expert to refute the same and cause the striking out of Dr. Co's testimony. Surely, his gratuitous and layman's observation and conclusions cannot prevail over Dr. Co's expert medical opinions on the matter. More so, since there is no showing that Dr. Co deviated from the normal medical procedure or otherwise falsified the results of the medical examination conducted on private complainant."[16]

Thus, in the end, this Court has neither the basis nor the inclination to overturn the conclusion of the trial court that Francisco Tumulad was guilty beyond reasonable doubt of the crime of rape.

WHEREFORE, the Decision of the Regional Trial Court dated 31 August 1987 is hereby AFFIRMED. In accordance with prevailing jurisprudence,[17] the amount of damages due to complainant Milagros Dioneda should be, and is hereby, INCREASED to P30,000.00. Costs against appellant.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., and Cortes, JJ., concur.
Bidin, J., on leave.

[1] Rollo, p. 13.

[2] Id., pp. 28-33.

[3] Id., p. 44.

[4] Id., pp. 28-29.

[5] Id., p. 30.

[6] People v. Alcantara, 126 SCRA 425 (1983); People v. Manzano, 118 SCRA 706 (1982).

[7] 71 SCRA 593 (1976).

[8] Rollo, pp. 30-31.

[9] Rollo, p. 31.

[10] TSN, 11 June 1987, pp. 224-227; underscoring supplied.

[11] TSN, 26 September 1984, pp. 153-154.

[12] Appellant's Brief, pp. 16-17.

[13] *People v. Abonada*, 169 SCRA 530 (1989); *People v. Sato*, 163 SCRA 602 (1988); *People v. Hernandez*, 49 Phil. 980 (1925).

[14] *People v. Rebancos*, 172 SCRA 425 (1989); *People v. Budol*, 143 SCRA 241 (1986); *People v. Ytac*, 95 SCRA 644 (1980).

[15] *People v. Bautista*, 142 SCRA 549 (1986); *People v. Ibal*, 143 SCRA 317 (1986); *People v. Senon, Jr.*, 121 SCRA 141 (1983).

[16] Brief for Plaintiff-Appellee, pp. 29-30; Rollo, pp. 125-126.

[17] *People v. Estebal*, 173 SCRA 209 (1989); *People v. Villanueva*, 162 SCRA 257 (1988); *People v. Viray*, G.R. No. 41085, 8 August 1988; *People v. Paragoso*, 166 SCRA 408 (1988).

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